

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:12 cr 108**

UNITED STATES OF AMERICA,)	
)	
Vs.)	ORDER
)	
JAMES EDWARD BUCHANAN.)	
)	
_____)	

THIS CAUSE coming on to be heard and being heard before the undersigned at the close of a Rule 11 proceeding that was held before this Court on November 5, 2012. It appeared to the Court at the call of this matter on for hearing the Defendant was present with his attorney, Fredilyn Sison and the government was present and represented through Assistant United States Attorney David Thorneloe. From the arguments of counsel for the Defendant and the arguments of the Assistant United States Attorney and the records in this cause, the Court makes the following findings:

Findings. On November 2, 2012 a bill of information was issued charging Defendant with transporting visual depictions which involved the use of a minor engaging in sexually explicit conduct, in violation of 18 U.S.C. § 2252(a)(1); a charge of receiving visual depictions which involved the use of a minor engaging in sexually explicit conduct, in violation of 18 U.S.C. § 2252(a)(2) and possessing matters which contained visual depictions which had been shipped in interstate commerce the

production of which involved the use of a minor engaging in sexually explicit conduct, in violation of 18 U.S.C. § 2252(a)(4)(B). On November 5, 2012, the undersigned held an inquiry, pursuant to Rule 11 of the Federal Rules of Criminal Procedure and accepted a plea of guilty of the Defendant to those charges. At the end of the Rule 11 proceeding, the Court presented the issue of whether or not Defendant should now be detained, pursuant to 18 U.S.C. § 3143(a)(2).

Discussion. 18 U.S.C. § 3143(a)(2) provides as follows:

(2) The judicial officer shall order that a person who has been found guilty of an offense in a case described in subparagraph (A), (B), or (C) of subsection (f)(1) of section 3142 and is awaiting imposition or execution of sentence be detained unless ----

(A)(i) the judicial officer finds there is a substantial likelihood that a motion for acquittal or new trial will be granted; or

(ii) an attorney for the Government has recommended that no sentence of imprisonment be imposed on the person; or

(B) the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to any other person or the community.

From an examination of the records in this cause, it appears Defendant has entered a plea of guilty to the offenses set forth above. Those crimes are crimes of violence as referenced under 18 U.S.C. § 3142(f)(1)(A) and are crimes for which a maximum terms of imprisonment of 10 years' or more is prescribed.

The undersigned made an inquiry of Assistant United States Attorney David

Thorneloe as to whether or not there will be a recommendation that no sentence of imprisonment be imposed upon Defendant. Mr. Thorneloe advised the Court that such a recommendation could not be made in this matter. The undersigned cannot find there is a substantial likelihood that a motion for acquittal or new trial will be granted due to the plea of guilty of Defendant. It would thus appear and the Court is of the opinion that the Court is required to apply the factors as set forth under 18 U.S.C. § 3143(a)(2) which require the detention of Defendant.

ORDER

IT IS, THEREFORE, ORDERED, that the terms and conditions of pretrial release in this matter are hereby **REVOKED** and it is ordered that Defendant be detained further proceedings in this matter.

Signed: November 9, 2012

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Dennis L. Howell
United States Magistrate Judge

